മിസ്റ്റർ കെ. പി. കണ്ണൻനായർ (*Joint Secretary to Government*).— ഫർനീഷ്ഡ് ഹൌസ് കൊടുക്കാമെന്നു പറഞ്ഞാൽ ഇതൊക്കെ അതിൽ ഉൾപ്പെട്ടും.

Demand was put and carried.

The Cochin Co-operative Land Mortgage Bank Regulation Amendment Bill.

* **Mr. Thomas Manjuran** *(Government Advocate and Law Officer).*—Sir, I beg to present the Select Committee report on the Cochin Co-operative Land Mortgage Bank Regulation Amendment Bill and move that the Bill be taken up for consideration. In presenting the Select Committee's report on this bill, which is a very concise one, I do not propose to make a long speech at all. I shall just add a few words. Honourable Members will remember that last time when this bill came up for discussion in this House, there was at first some discussion about it, some diffidence was expressed by some Honourable Members, and practically as a sort of agreement or compromise the bill was referred to a select committee. The diffidence that was felt by some non-official Members continued to be felt by the non-official Members of the select committee and the matter was discussed from all points of view and eventually an agreement was arrived at on the true position which was closely explained to the non-official Members. How the agreement was arrived at, why the agreement was arrived at, is explained by the note of Messrs. Sivarama Menon, Rama Menon and Ikkanda Warriar and published in the printed papers. They state, "we agree to the amendment only on the ground that the amendment appears to be necessary in view of the authority given to the mortgagor to lease the mortgaged property for a period of five years' duration under section 25 of the Cochin Co-operative Land Mortgage Bank Regulation and since leases granted under that power may be construed to amount to 'contracts to the contrary' under section 78 of the Cochin Transfer of Property Regulation." Now section 78 of the Transfer of Property Regulation reads thus:—

"If after the date of a mortgage any accession is made by the mortgagee the mortgagor in the absence of any contract to the contrary, shall for the purpose of security be entitled to such accession. Second illustration. A mortgages a certain plot of property belonging to B and afterwards constructs a house on the plot. For the purpose of the security he is entitled to the house as well as to the plot".

* Speech not corrected by the Hon'ble Member.

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That is to say whatever accession takes place to the security offered in the mortgage accession to enhance the security covered by the mortgage. That is the proposition. Now Honourable Members will notice that the section contains a significant clause, "in the absence of a contract to the contrary". That is to say the mortgagor and the mortgagee may stipulate that future improvements that may be made by him or his tenants will not add to the security of the mortgagee. Such a contract is possible under law now, that is under section 78. Section 25 of the Co-operative Land Mortgage Bank Regulation recognises the possibility of granting leases for periods not exceeding five years of property given in mortgage to the Land Mortgage Bank.

Reading that section along with the provisions contained in the Tenancy Regulation it would assume according to me that to the limited extent of a period of 5 years the leases granted in pursuance of that section would be regulated by the Tenancy Regulation. The tenants would be entitled in the case of such leases to obtain compensation for the improvements that he may have made during the period. I believe I am making the point clear. Now that may amount to a contract to the contrary as contemplated by section 78 of the Transfer of Property Regulation. Hence the non-official Members of the Committee agreed that the amendment bill was necessary. In other words without such an amendment the effect would be, the Committee agreed, that the Land Mortgage Bank after advancing the money on mortgage on the strength of particular properties will have to pay for the value of improvements effected by the tenant which would obviously be an onerous duty on the part of the Bank.

Mr. A. V. Moothedan *(Chalakkudi.)*— Why should the Bank pay for the improvements?

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—Then how will the Bank get possession of the property? What is the use of selling a property if they cannot reduce it to their possession. Supposing on an acre of land existing in a town over which a thousand rupees have been financed by the Land Mortgage Bank, the tenant for 5 years puts up a building for 50 thousand rupees. Would the Hon'ble Member say that the Land Mortgage Bank will get anything from it?

Mr. A. V. Moothedan *(Chalakkudi).*—There will be no difficulty as the property will be valued by commission.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—We generally know the work of the commissions. They have the habit of overvaluing the improvements. They will take into account the cost of supervision charges, engineering charges and all that. So that the solution pointed out by my Hon'ble Member for Chalakudy is not at all a feasible one. Under such terms no Land Mortgage Bank will be prepared to finance money-and if you want the Bank to function as a useful institution helping the poor and the needy surely we must place the Bank above all these difficulties. The Bank has rightly pointed out to the Government that in view of the existence of such a provision under the law it is not possible to safely advance money to the ryots. It is in these circumstances that the Government introduced the Bill. The Bill has been eventually accepted by the Select Committee which I may also state consisted entirely of lawyer Members. I therefore submit that in the best interests of the Bank this amendment bill should be passed without any further discussion.

Mr. A. Eachara Menon *(Chittur Rural).*—What about the tenants of these ryots?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—This bill relates only to tenants after the Land Mortgage Bank has advanced loans on mortgage.

Deputy President.—Before Hon'ble Members begin the discussion, may I make the Government position clear. According to the Transfer of Property Regulation the tenants' improvements will be an accretion to property. Therefore the mortgagee can sell the tenants' improvements if the tenancy was created after the mortgage. Under the Tenancy Regulation, the Chief Court has held that even where a tenant was introduced after the mortgage, the improvements made by him will not be available to the mortgagee. Between these two Regulations there is therefore a conflict. Whether the provision in the Transfer of Property Regulation or the provision in the Tenancy Regulation is to prevail is a point which has to be decided when the question arises. With regard to the Land Mortgage Bank whenever they advance loans on mortgage they see that the tenant surrenders all his rights to the Mortgagor. If the tenant has improved the property after the mortgage, if the Chief Court decision stands and if the Tenancy Regulation is to prevail over the Transfer of Property Regulation, then the position will be that the improvements made by the tenant after the mortgage will not be available to the Land Mortgage Bank for the amount advanced by

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them even though the tenant was let in after the Bank's mortgage. This bill is intended to make it clear that when a tenant was let into the property after its mortgage to the Land Mortgage Bank, his improvements will be available to the Bank and will be treated only as an additional security to the Bank. I think it is only proper for the Bank to claim that as sufficient notice is given by the Bank before they advance loans. If the mortgagor defaults payment of the instalments and if the property is sold the purchaser can get possession of the property at once. But if this amendment is not carried the situation will not be safe for the Bank and its security may suffer. I think this is the position which the Law Member wished to make clear to the House.

ADJOURNMENT MOTION (contd.)

re. the laches of Government in not carrying the Cochin Municipal Bill through its further stages.

Mr. E. Ikkanda Warriar (*Urakam*).—Sir, I move that the House do adjourn for the purpose of discussing a matter of urgent public importance, to wit, the laches of the Government in not carrying the Cochin Municipal Bill through its further stages inevitably necessitating a further extension of the life of the Municipal Councils of the State. As the House is well aware, according to the present Municipal Regulation the life of every Council is three years. The life of the existing Councils actually expired on the first of Vrischigom 1112. At or about that time the amendment of the existing Regulation was under the contemplation of Government, and in order that the new Councils may be constituted under the new Regulation the Government extended the life of the Councils by one year. That means the term of the present Councils will expire normally on the first Vrischigom 1113. An amendment Bill was subsequently introduced in this Council and it was referred to a Select Committee. The Select Committee went over the whole question, made the necessary changes and we signed the Report on the 14th of Kumbhom 1112. I understand that it was submitted to Government the next day. No doubt I had to submit a Dissenting Minute. It was a very short one and it was submitted in the course of 2 or 3 days. I think it did not stand in the way of Government in getting the bill printed. In fact the idea at the time was that it would be possible for this Council to consider and pass that bill in this Session itself. The Preliminary Agenda was sent to us 2 or 3 weeks before the meeting. There was more than a week

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